



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Kranco Incorporated

File: B-242579

Date: May 1, 1991

Judy Moran for the protester.
S.J. Evans, National Aeronautics and Space Administration, for the agency.
Barbara C. Coles, Esq., Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Exclusion of protester's proposal from the competitive range is proper where the agency reasonably determines that given the proposal's high price--which does not reflect a superior technical approach--it has no reasonable chance of being selected for award.
2. An agency's evaluation must be based on the proposal submitted and an offeror that fails to submit its lowest price with its initial proposal runs the risk of being excluded from further competition for award, despite subsequent claims by the protester that it could have reduced its price in the areas of overhead, profit, and material costs.

DECISION

Kranco Incorporated protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 10-3-0025-0, issued by the John F. Kennedy Space Center, National Aeronautics and Space Administration (NASA), for two bridge cranes. Kranco contends that the decision to exclude its proposal from the competitive range was unreasonable and improper.

We deny the protest.

The RFP, issued on September 13, 1990, contemplates the award of a firm, fixed-price contract for the design, fabrication, delivery, installation, and testing of two bridge cranes. Section M of RFP explains that proposals will be evaluated against the following factors: mission suitability, cost, relevant experience and past performance, and other

considerations. The RFP also states that "[t]he Mission Suitability Factor and the Cost Factor are the most important factors and as related to each other are essentially equal in importance." With regard to the other factors, the solicitation provided that "[t]he Relevant Experience and Past Performance factor and the Other Considerations factor are essentially equal in importance and together are less important than the Mission Suitability Factor and the Cost Factor together."

Two offerors, Kranco and Ederer, responded to the solicitation by the October 22 due date for receipt of proposals. NASA evaluated the proposals and concluded that they were technically equal, but the Kranco proposal was significantly more expensive. Because Kranco's proposed price was also significantly higher than the government's estimate, the Source Evaluation Panel (SEP) determined that Kranco did not have a reasonable chance of being selected for award. As a result, the SEP recommended that Kranco be excluded from the competitive range. After receiving notification of its exclusion, Kranco protested to our Office.

Kranco contends that NASA abused its discretion in excluding it from the competitive range. In this regard, the protester argues that the agency's decision unreasonably presumed that Kranco would not make price reductions significant enough to receive award. In its comments responding to the agency report, the protester also charges that the agency unreasonably refused to entertain the idea that perhaps--given the detailed design specifications that Kranco alleges prevented offerors from developing different approaches--the significant difference in price was due to a pricing error by Ederer.

The purpose of a competitive range determination in a negotiated procurement is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a); S&Q Corp., B-219420, Oct. 28, 1985, 85-2 CPD ¶ 471, aff'd, B-219420.2, Dec. 5, 1985, 85-2 CPD ¶ 628. The competitive range consists of all proposals that have a reasonable chance of being selected for award, including those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions; however, a proposal need not be included in the competitive range when the agency reasonably determines that the proposal

has no reasonable chance of being selected for award. Information Sys. & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30. Price is a proper factor and may emerge as the dominant factor in determining whether proposals fall within the competitive range. Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264; Communication Mfg. Co., B-215978, Nov. 5, 1984, 84-2 CPD ¶ 497. We will not disturb a determination concerning whether an offer should or should not be included in the competitive range unless the record indicates that the determination was unreasonable. Rosser, White, Hobbs, Davidson, McClellan, Kelley, Inc., 66 Comp. Gen. 169 (1986), 86-2 CPD ¶ 714.

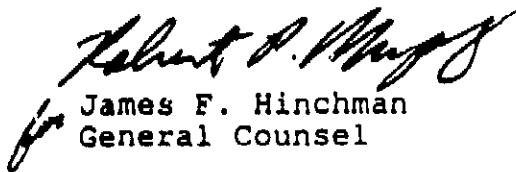
As discussed above, NASA concluded that the two offerors proposed approaches of relatively equal technical quality. However, Kranco's price was approximately 50 percent higher than the price submitted by Ederer. In reviewing the cost or pricing data submitted with the proposals, NASA concluded that both offerors proposed prices that were reasonable for the technical approaches offered. NASA found that Kranco might have overstated its overhead in pricing its offer, but that any reduction in this area by Kranco would have left its price significantly higher than Ederer's price. With regard to any other possible reductions, the agency concluded that Kranco would be unable to reduce its price sufficiently to receive award. The agency's conclusion is supported by the protester's concession, in its comments on the agency report, that it could not lower its price to that proposed by Ederer.

Kranco's argument that it made an error in its initial proposal and would have corrected that error and reduced its price in a subsequent offer does not constitute a basis for overturning NASA's decision to exclude it from the competitive range. Kranco was clearly on notice that the agency could award the contract on the basis of initial offers and consequently, that its initial offer should contain both its best price and technical approach. See FAR § 52.215-16, incorporated in the RFP at Article L-1, "Solicitation Provisions Incorporated by Reference." By ignoring the warning that it should submit its best price with its initial offer and by failing to scrutinize closely its material costs, overhead rates, and profit, which Kranco now argues were too high and erroneously applied, Kranco assumed the risk that it would be excluded from further competition for award. See Cosmos Eng'rs, Inc., B-218318, May 1, 1985, 85-1 CPD ¶ 491. Moreover, the protester's statement in its comments on the agency report that the only areas in which it could have reduced its price were overhead and profit appears to contradict, and thus refute, the claim in its initial protest that it could have lowered its price in the area of material costs.

Similarly, Kranco's argument that NASA should have suspected that Ederer had submitted an erroneous price is unconvincing. A protester has no standing to claim an error in a competitor's offer, since it is the responsibility of the contracting parties--the government and the low offeror--to assert rights and bring forth the necessary evidence to resolve mistake questions. Esilux Corp., B-234689, June 8, 1989, 89-1 CPD ¶ 538. In any event, the disparity between Kranco's and Ederer's prices does not by itself establish that Ederer made a mistake. See DOD Contracts, Inc., B-227689.2, Dec. 15, 1987, 87-2 CPD ¶ 591. After its evaluation of Ederer's lower-priced offer and after determining that there were no mathematical errors in Ederer's proposed price, that Ederer submitted detailed supporting data which matched its price summaries, and that Ederer's lower-priced proposal was relatively close to the government estimate, the agency had no reason to suspect a pricing error. See Sterling Servs., Inc.; Trim-Elite, Inc., B-229926.5; B-229926.6, Oct. 3, 1988, 88-2 CPD ¶ 306.

Given Kranco's admitted inability to lower its price substantially, together with the lack of any appreciable difference between the merit of its technical approach and that of Ederer's, and given NASA's conclusion that Ederer's significantly lower price is reasonable, there would have been no benefit to including Kranco in the competitive range. Rather, including Kranco in the competitive range when it had no reasonable chance for award would have created unwarranted expense and effort on the part of Kranco and the government. Accordingly, the decision to exclude Kranco's proposal from the competitive range was proper. See Everoure, Inc., B-226395.2, supra.

The protest is denied.


for James F. Hinchman
General Counsel